

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Moran	Team: Squad #6	CCRB Case #: 202002650	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/08/2020 4:30 PM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 10/8/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 04/09/2020 6:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 04/09/2020 6:54 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Edwin Nieves	16878	966738	040 PCT
3. POM Ivan Cruz	25251	967022	040 PCT
4. POM Ernesto Hernandez	01562	966617	040 PCT
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Manni	14081	965303	040 PCT
2. POM Peter Delohery	29163	967037	040 PCT
3. POM Jose Tejada	13574	961359	040 PCT
4. POM Nicholas Roveto	21509	968108	040 PCT
5. POM Nicholas Haspil	09698	966098	040 PCT
6. POM Tomasz Pustelny	00801	966789	040 PCT
7. POM Kelvin Perez	16887	966770	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer threatened to damage § 87(2)(b) s property.	§ 87(2)(b)
B.POM Edwin Nieves	Abuse: Police Officer Edwin Nieves entered § 87(2)(b) in the Bronx	§ 87(2)(b)
C.POM Ivan Cruz	Abuse: Police Officer Ivan Cruz entered § 87(2)(b) in the Bronx	§ 87(2)(b)
D.POM Ernesto Hernandez	Force: Police Officer Ernesto Hernandez tightly handcuffed § 87(2)(b)	§ 87(2)(b)
E.POM Ernesto Hernandez	Discourtesy: Police Officer Ernesto Hernandez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F. Officers	Abuse: Officers forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)

## Case Summary

On April 9, 2020, an unidentified individual, who did not witness the incident, filed a complaint on behalf of their mother, § 87(2)(b) via the CCRB online complaint form.

On April 8, 2020, sometime in the afternoon, EMS responded to § 87(2)(b)'s apartment located at § 87(2)(b) in the Bronx in regards to a call she made to her therapist. § 87(2)(b) opened her door and spoke with the paramedics. She confirmed her name, stated that she was alone in the residence and confirmed that no one had overdosed. The paramedics said that § 87(2)(b) seemed fine, apologized for ringing her bell and then left.

Approximately 30 minutes later, PO Edwin Nieves and Ivan Cruz of the 40<sup>th</sup> Precinct knocked on her door and requested § 87(2)(b) open it. An officer told § 87(2)(b) that they would remove her door if she did not open it (**Allegation A: Abuse of Authority** – § 87(2)(g)). § 87(2)(b) opened the door and officers entered (**Allegations B and C: Abuse of Authority** – § 87(2)(g)). PO Nieves and PO Cruz handcuffed § 87(2)(b) and eight additional officers responded to the location. While § 87(2)(b) was handcuffed on the floor, § 87(2)(b) told the officers that the handcuffs were too tight and PO Ernesto Hernandez of the 40<sup>th</sup> Precinct tightened them (**Allegation D: Force** – § 87(2)(g)). While officers were waiting for EMS, PO Hernandez stated, “We definitely can’t transport her yourself because she’s fucking [inaudible] as shit” (**Allegation E: Discourtesy** – § 87(2)(g)). § 87(2)(b) blacked out and woke up in the emergency room of § 87(2)(b) Hospital (**Allegation F: Abuse of Authority** – § 87(2)(g)). § 87(2)(b) was not arrested or issued any summonses.

Ten BWC were obtained in regards to the incident (BR 01).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: An officer threatened to damage § 87(2)(b)'s property.**

**Allegation (B) Abuse of Authority: Police Officer Edwin Nieves entered § 87(2)(b) in the Bronx.**

**Allegation (C) Abuse of Authority: Police Officer Ivan Cruz entered § 87(2)(b) in the Bronx.**

**Allegation (F) Abuse of Authority: Officers forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that PO Cruz and PO Nieves entered § 87(2)(b)'s apartment and that § 87(2)(b) was ultimately removed to § 87(2)(b) Hospital.

PO Cruz's BWC opened with him and PO Nieves outside of the door of an apartment. PO Nieves was speaking, but there was no audio for the first 30 seconds. At the 31 second mark, § 87(2)(b) opened her apartment door and PO Cruz asked if he could talk with her. § 87(2)(b) repeatedly told the officers not to go into her house and tried to close the door. The officers then pushed open § 87(2)(b)'s door and PO Cruz was heard asking § 87(2)(b) what was happening with her. The officers then entered § 87(2)(b)'s apartment. PO Cruz informed § 87(2)(b) they were there to help her (BR 01).

PO Nieves' BWC captured the same time frame of PO Cruz's BWC. His BWC does not capture audio until the 30 second mark when § 87(2)(b) opened her door. At the 11:01 second mark of PO Nieves' BWC, PO Nieves placed a call back to § 87(2)(b) and confirmed § 87(2)(b) was leaning towards suicidal ideations. § 87(2)(b)'s response cannot be heard. PO Nieves told § 87(2)(b)

that the call the officers received indicated that EMS did not make contact with anyone when they arrive, so officers were sent to try and establish contact. PO Nieves informed § 87(2)(b) that they called an ambulance for § 87(2)(b) as part of their procedure. At the 41:47 mark, two EMS responded to the location and PO Nieves informed them that § 87(2)(b)'s therapist called and officers responded because EMS could not establish contact with § 87(2)(b). He also stated that § 87(2)(b)'s therapist informed officers that she had suicidal thoughts (BR 01).

§ 87(2)(b) testified that on April 8, 2020, she called § 87(2)(b) and left her a voicemail stating she was not feeling well and felt she was drinking a little bit too much to cope with social distancing. § 87(2)(b) did not say she was suicidal to § 87(2)(b) but rather that she might sleep in the afternoon and therefore might not make her appointment. § 87(2)(b) did not tell anyone on this day that she intended to harm herself. Later that day, § 87(2)(b) heard her doorbell ring and § 87(2)(b) say they were paramedics and that someone had overdosed in her apartment. § 87(2)(b) told the EMTs there was no one else in her apartment and she was not having an overdose. The EMTs left. Approximately 30 minutes later, she heard banging on her apartment door again. When she asked who was at her door, an officer responded saying they were the NYPD and asked her to open her door. § 87(2)(b) asked the officers through her closed door what was happening, but they told her they would not answer unless she opened her door. An officer then said, "If you don't open your door, we're gonna take your door off." There were no questions that the officers asked § 87(2)(b) at the door besides asking her to open it. Six uniformed officers then entered her apartment. There were no questions that the officers asked § 87(2)(b) at the door besides asking her to open it and the officers did not ask to enter at any point (BR 02).

PO Cruz testified that he received a 911 call from a therapist stating her patient was inside § 87(2)(b) in the Bronx and was feeling suicidal and depressed. Central advised the officers that EMS had arrived at the individual's apartment and left because there was no answer at the door. When PO Nieves and PO Cruz arrived at the apartment, EMS was not present. PO Cruz heard § 87(2)(b) speaking and crying through the door. At this point, PO Cruz and PO Nieves knocked on the door and announced themselves. PO Cruz was trying to convince § 87(2)(b) to open the door, but she would not comply. PO Cruz told § 87(2)(b) that ESU would have to respond if she did not open the door. He said this to § 87(2)(b) to try and convince her to open the door. PO Cruz did not recall if he told § 87(2)(b) that ESU would have to take down the door nor did he recall if he or PO Nieves made reference in any way to the fact that when ESU responded, they would be removing the door. Neither PO Cruz nor any officer said, "If you don't open your door, we're gonna take your door off." § 87(2)(b) eventually opened her door but was trying to not let officers inside. She tried to close her door in the officers' faces, but PO Cruz put his foot in the threshold of the doorway so § 87(2)(b) could not close the door on them. She did not consent to officers entering her apartment. PO Cruz and PO Nieves entered § 87(2)(b)'s apartment because of the 911 call they received from the therapist stating that § 87(2)(b) was suicidal. PO Cruz believed § 87(2)(b) was in danger because of the therapist's call and because they did not establish contact. There was no other reason that they entered her apartment (BR 03).

PO Nieves' testimony was largely consistent with PO Cruz's testimony. He did not recall if he or PO Cruz made any statements to § 87(2)(b) about taking her door off or damaging her door in any way. Additionally, he called § 87(2)(b) while on scene and she confirmed for him that § 87(2)(b) was having suicidal thoughts and needed to be taken to the hospital (BR 04).

Although multiple officers entered and searched § 87(2)(b)'s apartment, PO Cruz and PO Nieves made the initial entry into the apartment and the allegations were plead accordingly.

Event #§ 87(2)(b) confirmed a female caller, identified as § 87(2)(b) § 87(2)(b) called 911 reporting an aided female with a history of self-harm who had been drinking and was feeling hopeless. § 87(2)(b) was nonviolent, but it was unknown if there were any weapons or injuries (BR 05).

During the 911 call, § 87(2)(b) § 87(2)(b) stated she was requesting 911 for medical and police to respond to § 87(2)(b) § 87(2)(b) was calling on behalf of her patient, § 87(2)(b) who was an EDP and left a voicemail stating she had been drinking and was experiencing hopelessness. § 87(2)(b) thanked § 87(2)(b) § 87(2)(b) for her services, but that she “can’t do this.” § 87(2)(b) § 87(2)(b) told 911 the voicemail sounded as she was saying “goodbye” and that she “really needed someone to check in on her” because § 87(2)(b) had a history of self-harm and she was concerned for her safety. § 87(2)(b) § 87(2)(b) attempted to call § 87(2)(b) § 87(2)(b)s daughter who had access to the apartment, but did not receive an answer (BR 06).

PO Nieves completed AIDED #§ 87(2)(b) and stated that officers responded to a 10-54 EDP and upon arrival, the EDP was suicidal and highly intoxicated. § 87(2)(b) § 87(2)(b) was removed to § 87(2)(b) Hospital for further treatment by EMS. PO Nieves marked ‘Yes’ for the box indicating ‘Spoke of harming self or others’ (BR 07).

An Emotionally Disturbed Person (EDP) is a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonable believes is likely to result in serious injury to himself or others NYPD Patrol Guide Procedure 221-13 (BR 08). Under the emergency doctrine, officers may conduct a warrantless entry to prevent loss of life or property. For this exception to apply, the police must have reasonable grounds to believe that an emergency is at hand and an immediate need for their assistance for the protection of life or property. The search must not be primarily motivated by an intent to arrest, and there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Doll, 21 N.Y.3d 665, (2013) (BR 09).

While it is undisputed that PO Cruz and PO Nieves were the first two officers to respond to § 87(2)(b) § 87(2)(b)s apartment and that there was a conversation between the officers and § 87(2)(b) § 87(2)(b) through a closed door, both officers denied ever threatening to damage her door. § 87(2)(b) § 87(2)(b) testified that she heard the comment through her door, but could not identify which officer made the threat. Both PO Cruz and PO Nieves testified that they made statements to § 87(2)(b) § 87(2)(b) that if she did not open the door then they would have to call someone to open the door. However, both officers denied ever telling § 87(2)(b) § 87(2)(b) that her door would be removed or damaged if she did not open the door. Neither PO Cruz nor PO Nieves’ BWC audio captured the timeframe when the statement was alleged.

According to PO Cruz and PO Nieves’ testimonies, they made the decision to enter § 87(2)(b) § 87(2)(b)s apartment because they were not able to successfully establish contact with § 87(2)(b) § 87(2)(b) and were concerned about her wellbeing § 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (D) Force: Police Officer Ernesto Hernandez tightly handcuffed** § 87(2)(b)

At the 5:36 mark of PO Hernandez's BWC, an officer off screen told PO Hernandez that § 87(2)(b) was getting loose again. § 87(2)(b) was on the floor on her stomach and moving her legs and upper body. § 87(2)(b) continuously screamed "somebody help me." At the 5:37 mark, § 87(2)(b)'s left hand was halfway through her handcuff so that the cuff was around her palm. While PO Hernandez started to adjust § 87(2)(b)'s left handcuff at the 6:00 minute mark, § 87(2)(b) said that they were too tight. At the 6:13 mark, PO Manni told PO Hernandez to make the cuff tighter so that § 87(2)(b) would not slip out. PO Hernandez clarified if he should make it tighter than he currently had it and PO Manni confirmed and said that § 87(2)(b) would slip out of the cuff as it were. PO Hernandez readjusted the cuff and then asked if it was good. PO Manni confirmed it was good (BR 01).

§ 87(2)(b) testified that while she was handcuffed on the floor, she continued to yell and possibly kick because she was afraid of the officers. She then told the officers that the handcuffs were too tight. An officer replied that they would take the handcuffs off if she stopped screaming. § 87(2)(b) told the officers that she would not stop screaming until the handcuffs were removed. The handcuffs were not removed. § 87(2)(b) has a bone disease so she was worried the handcuffs would harm her wrists.

PO Hernandez testified that when he arrived, § 87(2)(b) was already on the floor and handcuffed. He did not recall § 87(2)(b) ever stating that the handcuffs were too tight, but he did retighten her handcuffs because one of the handcuffs was loose and § 87(2)(b) was flailing her legs. They did not want her to slip out of the handcuffs and if § 87(2)(b) continued flailing her arms, she would become a danger to herself and the officers. Retightening the handcuffs was a precaution so that she would not slip out and harm herself or others. PO Manni instructed PO Hernandez to retighten the handcuffs. PO Hernandez made sure there was enough space such that the handcuffs were not too tight and stopped blood circulation. PO Hernandez did not recall § 87(2)(b) complaining of being in any physical pain at that moment. Upon reviewing his BWC from 5:51 minutes until 7:19 minutes, PO Hernandez recalled that § 87(2)(b) said the handcuffs were too tight the first time he was adjusting the handcuffs, so they loosened the handcuffs a little to give some slack. Officers then readjusted the handcuffs so her hands would not slip out and § 87(2)(b) said for the second time that the cuffs were too tight. PO Hernandez believed § 87(2)(b) was telling the officers the cuffs were too tight to get officers to loosen them so she could free her hand (BR 10).

PO Manni testified that § 87(2)(b) was on the floor on her stomach with her arms cuffed behind her back and was moving her arms and legs as much as she could in this position. After about six or seven minutes, PO Manni assisted PO Hernandez in adjusting § 87(2)(b)'s handcuffs. PO Manni held one of § 87(2)(b)'s arms, while PO Hernandez adjusted the cuffs. He did not recall which of § 87(2)(b)'s arms he held. PO Manni told PO Hernandez to make sure the handcuffs were tight enough. PO Manni had a general concern that § 87(2)(b) might slip out of the handcuffs, and that she could become a danger to herself or to others. There was nothing specific about § 87(2)(b)'s

actions at this point that caused PO Manni to believe that she would be a danger to herself or to others. § 87(2)(b) s arms did not come out of the handcuffs at any point (BR 11).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Members of service shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape, or to overcome active physical resistance or assault Patrol Guide 221-01 (BR 12).

§ 87(2)(b), § 87(2)(g)

**Allegation (E) Discourtesy: Police Officer Ernesto Hernandez spoke discourteously to**

§ 87(2)(b)

It is undisputed that PO Hernandez used profanity while interacting with § 87(2)(b)

At 8:22 minutes of PO Hernandez’s BWC, he said, “Fantastic. Well, we definitely can’t transport her yourself because she’s fucking [inaudible] as shit.”

PO Hernandez testified that he used profanity when interacting with § 87(2)(b) because he was frustrated with the situation. PO Hernandez told another officer that § 87(2)(b) had “gone to shit,” but did not direct the comment to § 87(2)(b). He acknowledged § 87(2)(b) was in the vicinity when he made the comment and most likely heard the comment.

DAO-DCT Case number 2017-17005 states that the tribunal has held that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (BR 13). The NYPD is committed to accomplishing its mission by treating every citizen with compassion, courtesy, professionalism and respect. Officers pledge to value human life, respect the dignity of each individual and render our services with courtesy and civility, Patrol Guide Section 200-02 (BR 14).

§ 87(2)(b), § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 15).
- PO Nieves has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject (BR 16).
- PO Cruz has been a member of service for two years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g) (BR 17).
- PO Hernandez has been a member of service for two years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g) (BR 18).

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of July 27, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 19).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad: 6

Investigator: <u>Julia Moran</u>	<u>Inv. Julia Moran</u>	<u>10/06/2021</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Jessica Peña</u>	<u>IM Jessica Peña</u>	<u>10/8/2021</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date